

TITLE 329 SOLID WASTE MANAGEMENT BOARD

#01-161 (SWMB)

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On October 15, 2002, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of amendments to rules at 329 IAC 9.

Comments were made by the following parties:

Maggie McShane, Indiana Petroleum Council	(IPC)
C. Michael Pitts, Indiana Petroleum Marketers and Convenience Store Association	(IPCA)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: The IPCA and the Petroleum Council do not object if the Board chooses to go forward, but we'd like to ask IDEM if, in the weeks and months that follow before we would return to the Board for final adoption, if during that time we maybe could get together as a stakeholder group and meet with you to discuss some of our technical concerns in more detail, as opposed to standing in the way of board action today. I really don't think that we're that far from coming to closer agreement. We further request that IDEM schedule a meeting with industry stakeholders to discuss these prior to the second and final hearing. (IPC)(IPCA)

Response: A stakeholder meeting to discuss the rule was held on December 17, 2002. IDEM agrees that it is essential to meet and work out the regulated community's concerns prior to final adoption.

Comment: We appreciate that the Department is allowing electronic reporting in this rule, and I'm sure down the road that's going to save quite a bit of time and money. But we'd like to suggest maybe that since that's going to be allowed that we may also be liberated somewhat from the burden of also having to file the paper hard copy. I understand that there may be some technical barriers to that right now at the Department, but that's one question we have, if we file electronically and the system is in place at the Department to handle that, can that serve as the official filing? And it save us one additional step of sending in a hard copy. It helps us a little bit with the paperwork. (IPC)

Response: IDEM appreciates your comment and is anxious to reach a level of electronic competency and sufficient faculty to allow the submittal of electronic reports to the agency. Electronic reporting solely will be allowed only when the agency is capable of dealing without paper. IDEM currently does not have the infrastructure to manage electronic information that would make it readily available to the public. State law requires at least one (1) paper copy. Even providing one (1) paper copy instead of three (3) paper copies should provide some regulatory relief.

Comment: Another issue that has been raised at rulemakings in the past with our industry, is when inspections are done at retail sites oftentimes an inspector will show up at a gas station or retail site for an inspection when the only person available at the site is the clerk, who's also managing quite a number of other tasks at the same time. There are provisions that allow a company that owns multiple sites to keep certain amounts of paperwork for those sites at a corporate headquarters or at a location other than on-site, and we would ask if possible, if the Department would consider that, for practical purposes, that's the way our industry operates and understand that maybe if an inspection could be announced in advance, it would help us to get the proper paperwork at each site, possibly even to allow for another staff person to be on hand so the lone clerk won't be responsible for having to field the questions. I'm sure you can imagine that those folks are probably pretty baffled when an inspector comes on-site. That's not to suggest that we don't recognize that there may be reasons for spot inspections, if there's a suspicion of a release or something that's of an immediate threat to human health or the environment. The purpose of this is not to try to get a heads-up on an inspection in order to go back and do the housecleaning prior to that, but rather just to appreciate that for practical purposes, we do have owners that do own multiple sites, and we want to try to relieve that extra burden that's put on the clerk to the extent possible, but not to the extent that we are causing any delay in treating an environmental threat or the like. Section 329 IAC 9-3-1 (d) Reporting and Record Keeping The IPCA proposed an amendment that would afford owners and operators a reasonable amount of time to produce

various UST related records during IDEM inspections. Our proposal was offered in good faith borne out of years of frustration and complaint that IDEM inspectors regularly show up, with no advance notice, at a convenience store where only one clerk may be on duty. We do not question IDEM's right to make immediate inspections where a release is suspected or for other just cause. However, IDEM's response that their current inspection practices can save the state money because the inspector is not sitting around waiting for records to arrive, but can inspect a facility as it normally does business is laughable. A much better inspection for both parties, would be achieved if IDEM would simply call to schedule in advance as many other government agencies do. This is something we've asked for, for several years. (IPCA)(IPC)

Response: The Indiana Statute at IC 13-14-2-2 allows a designated agent, upon presentation of proper credentials, to enter upon private or public property to inspect for and investigate possible violations of any of the following:..... (3) Environmental management laws.....(8) any rule adopted by one (1) of the boards. This statute does not require prior notification of an impending inspection. According to 329 IAC 9-3-1(d)(1) records maintained at the site must be immediately available for inspection by the agency. The records are necessary to perform complete inspections. Since IDEM recognizes this need, agency inspectors contact the facility in advance of an inspection as a general policy. Past experiences has shown that even with adequate notice some facilities are not prepared and do not have the records and personnel available. The records can be kept at an alternative site; however to perform a complete inspection, the records need to be available as soon possible upon request by the inspector. In addition, Indiana's rule language must be at least as stringent as the federal regulation.

Comment: The other point that I'd like to raise is about the requirement that a tank that has maintenance done to 30 percent that it be required to be removed and replaced rather than repaired. We feel very strongly that if maintenance is done on a tank and they follow the standards that are in place, that the 30 percent number is very arbitrary, that it doesn't necessarily indicate the future integrity of that tank. We'd like a chance to discuss this more with the Department about why we think that's the case, maybe bring a little bit more of the industry experience to the table in that discussion. I think it's a very good argument that there is a concern if you have a dilapidated tank, but we'd still like a little bit more time to discuss where that 30 percent figure comes from and whether or not that's consistent with what we believe the risk to be. 329 IAC 9-3.1-4 Repairs and Maintenance Allowed IDEM has proposed a new rule stating that maintenance to a steel lined tank is not allowed if thirty percent (30%) or more of the original lined surface has had maintenance performed. The IPCA believes the thirty percent (30%) standard is an arbitrary one that will not be possible to determine and therefore impossible to enforce. It should therefore be dropped. (IPCA) (IPC)

Response: This issue was discussed at the public meeting held on December 17, 2002 with the regulated community and appropriate modifications were made in the rule.

Comment: 329 IAC 9-3-1 (c) (12) (13) (14) (15) Reporting and Record Keeping IDEM merely responded that "this is not a new requirement; it was moved from 329 IAC 9-7-6." The IPCA agrees that rules similar to these were relocated. However, IDEM did not acknowledge that these rules have been significantly altered nor explain why. In at least two instances these rules would impose a potential record keeping requirement substantially greater than five (5) years by the addition of the "longest time period" of five years or "the time period the release detection system is used." Inasmuch as the life span of such systems can well exceed five years, this imposes an unnecessarily lengthy record keeping period. (IPCA)

Response: IDEM did not consider the changes to be significant. The original rule stated that the written performance claims must be kept five (5) years or another reasonable period of time determined by the commissioner. This language posed both a rule drafting problem and an ascertainable standard problem and by moving this section opened it up to closer scrutiny. Staff believed that a reasonable time period would be the time period the release detection system is used so that was put in the rule. This is comparable to keeping the warranty on a new appliance. For the protection of the owner/operator, it seems that the written performance claims should be kept as long as the system is being used.

Comment: 329 IAC 9-5-5.1 Initial Site Characteristic The IPCA requested that this rule be amended to allow for submission of initial site characterizations within sixty (60) days, rather than forty-five (45). In its response IDEM cited federal rules (40 CFR 280.63(b)) that states ISC's must be submitted within 45 days of release confirmation or another reasonable period of time determined by the implementing agency (emphasis added). The industry strongly believes that a 60 day time period is reasonable and allowed under federal rules. The IPCA asserts that a majority of ISC submittals are not currently being made within 45 days. (IPCA)

Response: The commentor is correct regarding the federal rule language. Another time period could be allowed that would be consistent with the federal requirement. IDEM believes that it is important for facilities to submit the ISCs in a timely manner, however, the department will defer to the regulated community and change the required time frame for the submittal of the initial site characterization from forty-five (45) days to sixty (60) days.

Comment: 329 IAC 9-5-5.1(b)(2)(E)(viii)(EE) ISC-Soil Borings The IPCA objected to this proposed requirement for soil borings, stating that it will require a substantially greater level of accuracy than under current rules. IDEM responded that they are not asking for the accuracy that the commentor seems to envision.® This begs the question. We agree that it is possible in some cases to maintain the accuracy of horizontal closure that is requested on small uncomplicated sites. However, as the size of the site increases, the quantity and the distance of the measurements increase. As the quantity and distance of the measurements increase, accuracy decreases. (Equate it to trying to hit a target at 10 feet vs. 60 feet). As the complexity of the site increases due to landscaping and site improvement it also becomes more difficult to maintain this level of accuracy without performing a professional survey. If you are working at an abandoned station that has been leveled, it will be much easier to maintain the accuracy level than if you are working at an active facility trying to measure distances around obstructions such as moving traffic, MPDs, canopies, car washes, landscaping, etc. Most measurements obtained in the field during drilling activities are performed with tape measures or roll-a-tapes. Additional quality controls and equipment utilized during a professional survey would be necessary to maintain the level of accuracy demanded by the rule. In addition, it would be nearly impossible to translate these measurements to a scaled map at this level of accuracy unless prepared by a certified surveyor. As the scale of this map increases (1:10 vs. 1:60) the level of accuracy decreases. In proposing a rule change, IDEM should be forthcoming with a response that clearly tells the industry how this level of accuracy is to be achieved. (IPCA)

Response: IDEM agrees with the commentor and has modified the language to not require a vertical accuracy of soil borings.

Comment: 329 IAC 9-6-2.5(e)(3) Water Samples The IPCA is appreciative that the Department responded that it will clarify the rule. However, we found the proposed clarification to also be confusing. The IPCA proposes that the clarification state, If groundwater is not encountered within a depth of thirty (30) feet, a soil sample must be obtained at the base of the boring.® (IPCA)

Response: IDEM agrees with the commentor and has modified the proposed language to read as the commentor suggested. This language was modified in several places in the proposed rule.

Comment: 329 IAC 9-6-2.5(f)(4) Closure Procedure IDEM's proposed new language requiring that a ground water sample must be collected from a continuous boring in the center of the tank pit that extends to the first saturated ground water zone or to a total of the thirty (30) feet below grade® should be dropped. If a tank is removed and no groundwater is encountered in the excavation, and the confirmatory soil samples obtained during removal indicate that there are no impacts to the soil on the sidewalls and the base of the excavation and there is no evidence of a release from the tank and product piping, then it is still required to advance a push probe boring to the groundwater table or to a minimum of thirty (30) feet deep to obtain a groundwater sample in the center of the tank pit. This boring is not necessary if there is not evidence of a release or suspected release. What is the point of performing the confirmatory soil sampling and documentation of the condition of tanks and product lines when it is still required to obtain a groundwater sample regardless of whether the soils are clean and the tanks and lines are not leaking? In addition, if you are closing a waste oil UST, it could effectively double the cost of closure. Minimum charge for a push probe rig is \$650 to \$750. If located in a remote area or if drilling penetration is difficult, the charge will be \$1,000 to \$1,200. In addition, a geologist must supervise the activity (\$250-\$500). (IPCA)

Response: IDEM agrees with the commentor and the assessment. 329 IAC 9-6-2.5(f)(4) will be deleted. The department will rely on collection of soil and ground water samples, when encountered, in the UST pit for removal closure. Borings will be required for in-place and change-in-service closure, however.